

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

PHILLIP IMPERI,

Defendant.

ORDER
11-CR-370-A

The defendant, Phillip Imperi, has filed a motion pursuant to Fed. R. Crim. P. 32.1(c) for early termination of a three-year sentence of probation imposed November 26, 2012. Pursuant to 18 U.S.C. § 3564(c), the Court is authorized to discharge a defendant from probation if, after at least a year of probation has been served, the Court is satisfied, in light of the applicable purposes of sentencing in 18 U.S.C. § 3553(a), discharge is warranted by conduct of the defendant and serves the interests of justice. For the reasons stated below, defendant Imperi's motion for early discharge from probation is granted, effective August 1, 2014.

Defendant Imperi was charged in a Criminal Complaint dated February 15, 2007, with conspiracy to possess with intent to distribute, and to distribute, cocaine within 1,000 feet of a school, in violation of 21 U.S.C. §§ 846 and 860. The Complaint alleged hand-to-hand controlled sales of cocaine in January and February, 2007, inside a co-conspirator's residence within 1,000 feet of a public school.

Defendant Imperi was released on secured bail a few days after his initial appearance. The Criminal Complaint was dismissed, without prejudice, June 14,

2007. Defendant was compliant with the conditions of pretrial release while the Complaint was pending.

Defendant Imperi was charged again, on December 11, 2011, in a three-Count Indictment based upon the same controlled sales of cocaine alleged in support of the earlier Criminal Complaint. Defendant was released on a non-financial bond. He entered a guilty plea to a conspiracy count in the Indictment in June of 2012, and was continued on release pending sentencing. Defendant was fully compliant with the conditions of pretrial release.

The Court sentenced defendant Imperi to a non-Guideline sentence of three years probation on November 26, 2012. The probationary sentence was a very substantial variance from the 18 to 24 months advisory range of imprisonment defendant faced. Without repeating the reasons for the non-Guidelines sentence imposed by the Court, the Court found the three-year probationary sentence was sufficient to meet the purposes of sentencing in 18 U.S.C. § 3553(a) primarily because defendant had turned his life around, and had been leading a productive, law-abiding life, since he was first charged nearly six years earlier. Defendant had moved away from the Buffalo area, specifically to stay away from some negative influences, and partly because of positive influences of his wife. The Court received some extraordinary letters in support of a lenient sentence.

Since being sentenced to probation in December 2012, defendant Imperi has continued to lead a law-abiding life. Good conduct is expected of every person serving a sentence of probation, but it has been more than seven years that

defendant has been on Court supervision, or has had the criminal charges giving rise to his probationary sentence hanging over his head. During these seven years, defendant has established that he does not likely need further Court supervision to lead a law-abiding life, and he seems to be on a path of continually trying to better himself. Defendant's supervising United States Probation Officer reportedly agrees that early termination of defendant's probation by discharge is warranted.

While there is a punitive aspect to probation that is important and that should never to be overlooked, the Court concludes, after careful consideration of the circumstances presented here, that no further punishment is necessary to serve applicable purposes of sentencing in 18 U.S.C. § 3553(a). The Court has weighed a risk that discharge could promote unwarranted sentence disparity among similarly-situated persons. However, in these particular circumstances, including defendant Imperi's personal turn-around, early termination should promote respect for the law. The Court therefore finds early termination of defendant's three-year term of probation is warranted by the good conduct of defendant and serves the interests of justice in light of the purposes of sentencing in 18 U.S.C. § 3553(a). Accordingly, defendant's early termination motion is granted, and effective August 1, 2014, his probation is discharged pursuant to 18 U.S.C. § 3564(c).

SO ORDERED.

Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: July 23, 2014

